



Connecticut Criminal Defense Lawyers Association

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Testimony of Attorney Tejas Bhatt  
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Raised Bill No. 5640 - *An Act Concerning Compelled Disclosure of Cellular  
Telephone and Internet Records*  
Judiciary Public Hearing – March 23, 2016

The Connecticut Criminal Defense Lawyers Associations is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

The CCDLA urges this committee to **vote favorably on Raised Bill 5640**. This bill would amend Conn. Gen. Stat. § 54-47aa, by requiring probable cause before a judge signs an ex-parte order for “cell-location” data and “metadata”. It also provides law enforcement with the ability to obtain this information without a court order when “exigent circumstances” exist.

This bill would allow law enforcement to obtain both the “cell site location information” or “geo-location” information *and* content of communications, however only upon a judicial finding of the appropriate Constitutional standard.

Under this bill, law enforcement can have access to location information upon a showing of reasonable suspicion and access to content upon a showing of probable cause.

Probable cause is the same standard required to obtain a search warrant. **Probable cause is a more stringent standard** that requires individualized showing that the person whose records are being sought is engaged in criminal activity. The *reasonable and articulable suspicion* standard is most frequently encountered in investigative detentions on the street, when officers are asking brief questions or patting down for weapons.

The difference between reasonable suspicion and probable cause is that reasonable suspicion is a lower standard and can arise from information that is less reliable than that required to show probable cause. Alabama v. White, 496 U.S. 325 (1990). For instance, an unverified tip from a known informant may not be reliable enough to establish probable cause to arrest an individual or search his person or his home, but can be sufficiently reliable to justify a brief investigative detention on the street or a stop-and-frisk for weapons. Adams v. Williams, 407 U.S. 143 (1972).

This consensus bill would require law enforcement to obtain an order based on probable cause before they can have access to the private data contained in one's telephone. However, this bill does not restrict their

ability to apply directly to the telephone carrier to get real-time tracking data when an exigent circumstance exists. This would permit law enforcement to legally fulfill their public safety function.

Because this bill complies with the Fourth Amendment and protects the rights of the citizens of Connecticut to be secure in their effects and the also provides law enforcement with the tools to protect and serve those same citizens, the CCDLA urges this committee to recognize those same concerns and vote favorably on **Raised Bill 5640**.